

1976—Subsecs. (a), (b), (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100-203, set out as a note under section 585 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Amendment by Pub. L. 99-499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99-499, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, set out as notes under sections 6154 and 51 of this title, see section 103(f) of Pub. L. 90-364, set out as an Effective Date of 1968 Amendment note under section 6154 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100-647, set out as a note under section 861 of this title.

§ 6426. Credit for alcohol fuel, biodiesel, and alternative fuel mixtures

(a) Allowance of credits

There shall be allowed as a credit—

- (1) against the tax imposed by section 4081 an amount equal to the sum of the credits described in subsections (b), (c), and (e), and
- (2) against the tax imposed by section 4041 an amount equal to the sum of the credits described in subsection (d).

No credit shall be allowed in the case of the credits described in subsections (d) and (e) unless the taxpayer is registered under section 4101.

(b) Alcohol fuel mixture credit

(1) In general

For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

(2) Applicable amount

For purposes of this subsection—

(A) In general

Except as provided in subparagraphs (B) and (C), the applicable amount is—

- (i) in the case of calendar years beginning before 2009, 51 cents, and
- (ii) in the case of calendar years beginning after 2008, 45 cents..¹

¹ So in original.

(B) Mixtures not containing ethanol

In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

(C) Reduction delayed until annual production or importation of 7,500,000,000 gallons

In the case of any calendar year beginning after 2008, if the Secretary makes a determination described in section 40(h)(3)(B) with respect to all preceding calendar years beginning after 2007, subparagraph (A)(ii) shall be applied by substituting “51 cents” for “45 cents”.

(3) Alcohol fuel mixture

For purposes of this subsection, the term “alcohol fuel mixture” means a mixture of alcohol and a taxable fuel which—

- (A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or
- (B) is used as a fuel by the taxpayer producing such mixture.

For purposes of subparagraph (A), a mixture produced by any person at a refinery prior to a taxable event which includes ethyl tertiary butyl ether or other ethers produced from alcohol shall be treated as sold at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

(4) Other definitions

For purposes of this subsection—

(A) Alcohol

The term “alcohol” includes methanol and ethanol but does not include—

- (i) alcohol produced from petroleum, natural gas, or coal (including peat), or
- (ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

(B) Taxable fuel

The term “taxable fuel” has the meaning given such term by section 4083(a)(1).

(5) Volume of alcohol

For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2 percent of the volume of such alcohol (including denaturants).

(6) Termination

This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

(c) Biodiesel mixture credit

(1) In general

For purposes of this section, the biodiesel mixture credit is the product of the applicable

amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

(2) Applicable amount

For purposes of this subsection, the applicable amount is \$1.00.

(3) Biodiesel mixture

For purposes of this section, the term “biodiesel mixture” means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

(4) Certification for biodiesel

No credit shall be allowed under this subsection unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agribiodiesel in the product.

(5) Other definitions

Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

(6) Termination

This subsection shall not apply to any sale, use, or removal for any period after December 31, 2009.

(d) Alternative fuel credit

(1) In general

For purposes of this section, the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the taxpayer for use as a fuel in a motor vehicle or motorboat, sold by the taxpayer for use as a fuel in aviation, or so used by the taxpayer.

(2) Alternative fuel

For purposes of this section, the term “alternative fuel” means—

(A) liquefied petroleum gas,

(B) P Series Fuels (as defined by the Secretary of Energy under section 13211(2) of title 42, United States Code),

(C) compressed or liquefied natural gas,

(D) liquefied hydrogen,

(E) any liquid fuel which meets the requirements of paragraph (4) and which is derived from coal (including peat) through the Fischer-Tropsch process,

(F) compressed or liquefied gas derived from biomass (as defined in section 45K(c)(3)), and

(G) liquid fuel derived from biomass (as defined in section 45K(c)(3)).

Such term does not include ethanol, methanol, or biodiesel.

(3) Gasoline gallon equivalent

For purposes of this subsection, the term “gasoline gallon equivalent” means, with re-

spect to any nonliquid alternative fuel, the amount of such fuel having a Btu content of 124,800 (higher heating value).

(4) Carbon capture requirement

(A) In general

The requirements of this paragraph are met if the fuel is certified, under such procedures as required by the Secretary, as having been derived from coal produced at a gasification facility which separates and sequesters not less than the applicable percentage of such facility’s total carbon dioxide emissions.

(B) Applicable percentage

For purposes of subparagraph (A), the applicable percentage is—

(i) 50 percent in the case of fuel produced after September 30, 2009, and on or before December 30, 2009, and

(ii) 75 percent in the case of fuel produced after December 30, 2009.

(5) Termination

This subsection shall not apply to any sale or use for any period after December 31, 2009 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen).

(e) Alternative fuel mixture credit

(1) In general

For purposes of this section, the alternative fuel mixture credit is the product of 50 cents and the number of gallons of alternative fuel used by the taxpayer in producing any alternative fuel mixture for sale or use in a trade or business of the taxpayer.

(2) Alternative fuel mixture

For purposes of this section, the term “alternative fuel mixture” means a mixture of alternative fuel and taxable fuel (as defined in subparagraph (A), (B), or (C) of section 4083(a)(1)) which—

(A) is sold by the taxpayer producing such mixture to any person for use as fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

(3) Termination

This subsection shall not apply to any sale or use for any period after December 31, 2009 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen).

(f) Mixture not used as a fuel, etc.

(1) Imposition of tax

If—

(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

(B) any person—

(i) separates the alcohol or biodiesel from the mixture, or

(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

(2) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

(g) Coordination with exemption from excise tax

Rules similar to the rules under section 40(c) shall apply for purposes of this section.

(h) Denial of double benefit

No credit shall be determined under subsection (d) or (e) with respect to any fuel with respect to which credit may be determined under subsection (b) or (c) or under section 40 or 40A.

(i) Limitation to fuels with connection to the United States**(1) Alcohol**

No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States.

(2) Biodiesel and alternative fuels

No credit shall be determined under this section with respect to any biodiesel or alternative fuel which is produced outside the United States for use as a fuel outside the United States.

For purposes of this subsection, the term “United States” includes any possession of the United States.

(Added Pub. L. 108-357, title III, §301(a), Oct. 22, 2004, 118 Stat. 1459; amended Pub. L. 109-58, title XIII, §1344(a), Aug. 8, 2005, 119 Stat. 1052; Pub. L. 109-59, title XI, §§1113(b)(1)–(3)(A), 11151(e)(2), Aug. 10, 2005, 119 Stat. 1947, 1948, 1969; Pub. L. 110-172, §5(a)(2), (3), Dec. 29, 2007, 121 Stat. 2479; Pub. L. 110-234, title XV, §§15331(b), 15332(b), May 22, 2008, 122 Stat. 1516; Pub. L. 110-246, §4(a), title XV, §§15331(b), 15332(b), June 18, 2008, 122 Stat. 1664, 2278; Pub. L. 110-343, div. B, title II, §§202(a), (b)(2), 203(c)(1), 204(a)(1), (2), (b), (c), Oct. 3, 2008, 122 Stat. 3832, 3834.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 6426, added Pub. L. 91-258, title II, §206(c), May 21, 1970, 84 Stat. 245; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, provided for a refund of aircraft use tax where plane transports for hire in foreign air commerce, prior to repeal by Pub. L. 97-248, title II, §280(c)(2)(G), (d), Sept. 3, 1982, 96 Stat. 564, 565, applicable with respect to transportation beginning after Aug. 31, 1982.

AMENDMENTS

2008—Subsec. (b)(2)(A). Pub. L. 110-246, §15331(b)(3), substituted “subparagraphs (B) and (C)” for “subparagraph (B)” in introductory provisions.

Pub. L. 110-246, §15331(b)(1), substituted “the applicable amount is—” for “the applicable amount is 51 cents” and added cls. (i) and (ii).

Subsec. (b)(2)(C). Pub. L. 110-246, §15331(b)(2), added subpar. (C).

Subsec. (b)(5), (6). Pub. L. 110-246, §15332(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(2). Pub. L. 110-343, §202(b)(2), amended par. (2) generally. Prior to amendment, text read as follows: “For purposes of this subsection—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

“(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is \$1.00.”

Subsec. (c)(6). Pub. L. 110-343, §202(a), substituted “December 31, 2009” for “December 31, 2008”.

Subsec. (d)(1). Pub. L. 110-343, §204(b)(2), inserted “sold by the taxpayer for use as a fuel in aviation,” after “motorboat.”

Subsec. (d)(2)(E). Pub. L. 110-343, §204(c)(2), inserted “which meets the requirements of paragraph (4) and which is” after “any liquid fuel”.

Subsec. (d)(2)(F), (G). Pub. L. 110-343, §204(b)(1), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(4). Pub. L. 110-343, §204(c)(1), added par. (4). Former par. (4) redesignated (5).

Pub. L. 110-343, §204(a)(1), substituted “December 31, 2009” for “September 30, 2009”.

Subsec. (d)(5). Pub. L. 110-343, §204(c)(1), redesignated par. (4) as (5).

Subsec. (e)(3). Pub. L. 110-343, §204(a)(2), substituted “December 31, 2009” for “September 30, 2009”.

Subsec. (i). Pub. L. 110-343, §203(c)(1), added subsec. (i).

2007—Subsec. (d)(2)(F). Pub. L. 110-172, §5(a)(2), substituted “fuel” for “hydrocarbons”.

Subsec. (h). Pub. L. 110-172, §5(a)(3), added subsec. (h). 2005—Pub. L. 109-59, §1113(b)(3)(A), substituted “alcohol fuel, biodiesel, and alternative fuel” for “alcohol fuel and biodiesel” in section catchline.

Subsec. (a). Pub. L. 109-59, §1113(b)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

“(1) the alcohol fuel mixture credit, plus

“(2) the biodiesel mixture credit.”

Subsec. (c)(6). Pub. L. 109-58 substituted “2008” for “2006”.

Subsec. (d). Pub. L. 109-59, §1113(b)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (d)(2)(F). Pub. L. 109-59, §11151(e)(2), substituted “section 45K(c)(3)” for “section 29(c)(3)”.

Subsecs. (e) to (g). Pub. L. 109-59, §1113(b)(2), added subsec. (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 202(a), (b)(2) of Pub. L. 110-343 applicable to fuel produced, and sold or used, after Dec. 31, 2008, see section 202(g)(1) of Pub. L. 110-343, set out as a note under section 40A of this title.

Amendment by section 203(c)(1) of Pub. L. 110-343 applicable to claims for credit or payment made on or after May 15, 2008, see section 203(d) of Pub. L. 110-343, set out as a note under section 40 of this title.

Pub. L. 110-343, div. B, title II, §204(d), Oct. 3, 2008, 122 Stat. 3835, provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall apply to fuel sold or used after the date of the enactment of this Act [Oct. 3, 2008].”

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15331(b) of Pub. L. 110-246 effective June 18, 2008, see section 15331(c) of Pub. L. 110-246, set out as a note under section 40 of this title.

Amendment by section 15332(b) of Pub. L. 110-246 applicable to fuel sold or used after Dec. 31, 2008, see section 15332(c) of Pub. L. 110-246, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-172, § 5(b), Dec. 29, 2007, 121 Stat. 2479, provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall take effect as if included in the provisions of the SAFETEA-LU [Pub. L. 109-59] to which they relate.”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 11113(b)(1)–(3)(A) of Pub. L. 109-59 applicable to any sale or use for any period after Sept. 30, 2006, see section 11113(d) of Pub. L. 109-59, set out as a note under section 4041 of this title.

Amendment by section 11151(e)(2) of Pub. L. 109-59 effective as if included in the provision of the Energy Tax Incentives Act of 2005, Pub. L. 109-58, title XIII, to which such amendment relates, see section 11151(f)(3) of Pub. L. 109-59, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendment note under section 40 of this title.

§ 6427. Fuels not used for taxable purposes**(a) Nontaxable uses**

Except as provided in subsection (k), if tax has been imposed under paragraph (2) or (3) of section 4041(a) or section 4041(c) on the sale of any fuel and the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary shall pay (without interest) to him an amount equal to—

(1) the amount of tax imposed on the sale of the fuel to him, reduced by

(2) if he uses the fuel, the amount of tax which would have been imposed under section 4041 on such use if no tax under section 4041 had been imposed on the sale of the fuel.

(b) Intercity, local, or school buses**(1) Allowance**

Except as otherwise provided in this subsection and subsection (k), if any fuel other than gasoline (as defined in section 4083(a)) on the sale of which tax was imposed by section 4041(a) or 4081 is used in an automobile bus while engaged in—

(A) furnishing (for compensation) passenger land transportation available to the general public, or

(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)),

the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the product of the number of gallons of such fuel so used multiplied by the rate at which tax was imposed on such fuel by section 4041(a) or 4081, as the case may be.

(2) Reduction in refund in certain cases**(A) In general**

Except as provided in subparagraphs (B) and (C), the rate of tax taken into account under paragraph (1) shall be 7.4 cents per gallon less than the aggregate rate at which tax was imposed on such fuel by section 4041(a) or 4081, as the case may be.

(B) Exception for school bus transportation

Subparagraph (A) shall not apply to fuel used in an automobile bus while engaged in

the transportation described in paragraph (1)(B).

(C) Exception for certain intracity transportation

Subparagraph (A) shall not apply to fuel used in any automobile bus while engaged in furnishing (for compensation) intracity passenger land transportation—

(i) which is available to the general public, and

(ii) which is scheduled and along regular routes,

but only if such bus is a qualified local bus.

(D) Qualified local bus

For purposes of this paragraph, the term “qualified local bus” means any local bus—

(i) which has a seating capacity of at least 20 adults (not including the driver), and

(ii) which is under contract (or is receiving more than a nominal subsidy) from any State or local government (as defined in section 4221(d)) to furnish such transportation.

(3) Limitation in case of nonscheduled intercity or local buses

Paragraph (1)(A) shall not apply in respect of fuel used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

(4) Refunds for use of diesel fuel in certain intercity buses

With respect to any fuel to which paragraph (2)(A) applies, if the ultimate purchaser of such fuel waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

(A) is registered under section 4101, and

(B) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(c) Use for farming purposes

Except as provided in subsection (k), if any fuel on the sale of which tax was imposed under paragraph (2) or (3) of section 4041(a) or section 4041(c) is used on a farm for farming purposes (within the meaning of section 6420(c)), the Secretary shall pay (without interest) to the purchaser an amount equal to the amount of the tax imposed on the sale of the fuel. For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, the rules of paragraph (4) of section 6420(c) shall be applied (except that “liquid taxable under section 4041” shall be substituted for “gasoline” each place it appears in such paragraph (4)).

(d) Use by certain aircraft museums or in certain other aircraft uses

Except as provided in subsection (k), if—

(1) any gasoline on which tax was imposed by section 4081, or